IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/811,160
Applicant(s)	:	Bilskie, et al.
Filed	:	March 26, 2004
Title	:	AN APPARATUS FOR SLABBING A
	:	ROLL OF MATERIAL
TC/A.U.	:	3724
Examiner	:	K. E. Peterson
Conf. No.	:	1981
Docket No.	:	9596
Customer No.	:	27752

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir,

This is Appellants' Brief relating to an appeal from the September 5, 2007 Final Rejection in the above-identified Application. The Notice of Appeal was filed electronically with the USPTO, addressed to Commissioner for Patents, Alexandria, VA 22313-1450 on November 30, 2007, and was noted as received by the USPTO on November 30, 2007.

I. Real Party in Interest

The real party in interest for the present Application S.N. 10/811,160 is The Procter & Gamble Company of Cincinnati, OH by virtue of the Assignment recorded on June 21, 2004, at Reel No. 014756, Frame 0276.

II. Related Appeals and Interferences

There are no related appeals or interferences known to Appellants' undersigned legal representative, which will directly affect, or be directly affected by or have a bearing on, the Board's decision in the present appeal.

III. Status of Claims

In the Notice of Appeal, Appellants appealed the final rejection of all pending Claims 1-20. The complete copy of the appealed Claims is set forth in the Appendix.

Claims 1, 3-7, 9, 11-14, 16, and 18-19 stand finally rejected under 35 U.S.C. §103(a) over McCay, et al., U.S. Patent No. 4,506,575 in view of Esping, et al., U.S. Patent No. 6,761,098.

IV. Status of the Amendments

No amendments to the instant claims have been filed by Appellants in response to the Final Office Action dated May 11, 2007. No amendments to the claims have been filed after receipt of the Advisory Action dated September 5, 2007.

V. Summary of the Claimed Subject Matter

According to independent Claim 1, an apparatus (1) for slabbing a roll (R) having a generally cylindrical shape, an axis, an axial dimension, a radius, a core (C) having a core diameter, an outer circumference and a wall thickness, and a material having an outer circumference wound about the core comprises a transport element (110) capable of engaging the roll and of conveying the roll to a slabbing position (S). (3:7-9; FIG. 1) The transport element further comprises a pair of roll engaging elements (115) capable of penetrating engagement of the core. (3:9-12; 4:5-16; FIG. 1) The apparatus also comprises a cutter (120) capable of separating the material of the roll. (3:19-23; FIG. 1) The apparatus also comprises an axial-traversing element (130) capable of transporting the cutter at least along the entire axial dimension of the material of the roll as, or after, the roll is transported to the

slabbing position. (6:5-8; FIG. 1) The apparatus also comprises a radial-traversing element (140) capable of transporting the cutter at least from the outer circumference of the roll to the outer circumference of the core as, or after, the roll is transported to the slabbing position. (6:33-36; FIG. 1) Additionally, the apparatus comprises a controller (600) capable of determining a maximum depth of cut. (9:6-8; FIG. 1). The motion of the radial traversing element is limited according to the determined maximum depth of cut. (9:9-11)

Claim 2 requires the apparatus to further comprise a powered (120) cutting blade. (5:33-36)

Claim 3 requires the apparatus to further comprise a feed section (200) disposed adjacent to the slabbing position. (10:1-2; FIG. 2) The transport element is capable of engaging a roll disposed in the feed section and of conveying the roll from the feed section to the slabbing position. (10:2-16)

Claim 4 requires the apparatus to comprise a discharge section (300) disposed adjacent to the slabbing position. (10:17-18; FIG. 3) The roll may be conveyed to the discharge section from the slabbing position. (10:18-28)

Claim 5 requires the apparatus to further comprise a material removal section (400) disposed at least partly beneath the slabbing position and capable of receiving material separated from the roll. (11:15-19; FIGS. 2, 3)

Claim 6 requires the apparatus to further provide the cutter as attached to the axial-traversing element and the axial-traversing element to be attached to the radial-traversing element. (7:22-25; FIG. 1)

Claim 7 requires the axial-traversing element to be capable of transporting the cutter beyond the entire axial dimension of the roll to a cutter parking position. (8:32-37; FIG. 1)

Claim 8 requires the apparatus to further comprise a sensor (500) capable of detecting the material of the roll. (8:21-22; FIG. 1)

According to independent Claim 9, an apparatus (1) for slabbing (R) a roll having a generally cylindrical shape, an axis, an axial dimension, a radius, a core (C) having a core diameter, an outer circumference and a wall thickness, and a material having an outer circumference wound around the core comprise a transport element (110) capable of

engaging the roll and of conveying the roll to a slabbing position (S). (3:7-9; FIG. 1) The transport element further comprising two roll engaging elements (115) capable of engaging the core. (3:9-12; 4:5-16; FIG. 1) The apparatus also comprises a cutter (120) capable of separating the material from the roll. (3:19-23; FIG. 1) The apparatus also comprises an axial-traversing element (130) capable of transporting the cutter at least along the entire axial dimension of the material of the roll as, or after, the roll is transported to the slabbing position. (6:5-8; FIG. 1) The apparatus also comprises a radial-traversing element (140) capable of transporting the cutter at least from the outer circumference of the roll to the outer circumference of the core as, or after, the roll is transported to the slabbing position. (6:33-36; FIG. 1) The apparatus also comprises a controller (600) capable of determining a maximum depth of cut according to the core wall thickness. (9:6-8; FIG. 1) The apparatus further comprises a material removal section (400) disposed at least partly beneath the slabbing position and capable of receiving material separated from the roll. (11:15-19; FIGS. 2, 3) The motion of the radial-traversing element is limited according to the determined maximum depth of cut. (9:9-11)

Claim 10 requires the apparatus of Claim 9 to further comprise a powered cutting blade (120). (5:33-36)

Claim 11 requires the apparatus of Claim 9 to further comprise a feed section (200) disposed adjacent to the slabbing position. (10:1-2; FIG. 2) The transport element is capable of engaging a roll disposed in the feed section and of conveying the roll from the feed section to the slabbing position. (10:2-16)

Claim 12 requires the apparatus of Claim 9 to further comprise a discharge section (300) disposed adjacent to the slabbing position (10:17-18; FIG. 3) The roll may be conveyed to the discharge section from the slabbing section. (10:18-28)

Claim 13 requires the apparatus of Claim 9 to provide the cutter as attached to the axial-traversing element and the axial-traversing element is attached to the radial-traversing element. (7:22-25; FIG. 1)

Claim 14 requires the apparatus of Claim 13 to provide the axial-traversing element as capable of transporting the cutter beyond the entire axial dimension of the roll to a cutter parking position. (8:32-37; FIG. 1)

Claim 15 requires the apparatus of Claim 9 to further comprise a sensor (500) capable of detecting the material of the roll. (8:21-22; FIG. 1)

Independent Claim 16 claims an apparatus (1) for slabbing a roll (R) having a generally cylindrical shape, an axis, an axial dimension, a radius, a core (C) having a core diameter, an outer circumference and a wall thickness, and a material having an outer circumference wound around the core comprising a transport element (110) integral with the apparatus that engages the roll and conveys the roll to a slabbing position (S). (3:7-9; FIG. 1) The transport element further comprises two roll engaging elements (115) capable of engaging the core. (3:9-12; 4:5-16; FIG. 1) The apparatus also comprises a cutter (120) that separates the material from the roll itself. (3:19-23; FIG. 1) The apparatus also comprises an axial-traversing element (130) that transports the cutter at least along the entire axial dimension of the material of the roll as, or after, the roll is transported to the slabbing position. (6:5-8; FIG. 1) Additionally, the apparatus comprises a radial-traversing element (140) that transports the cutter at least from the outer circumference of the roll to the outer circumference of the core as, or after, the roll is transported to the slabbing position. (6:33-36; FIG. 1) Additionally, the apparatus comprises a controller (500) that determines the maximum depth of cut. (9:6-8; FIG. 1). Additionally, the apparatus comprises a material removal section (400) disposed at least partly beneath the slabbing position that receives material separated from the roll. (11:15-19; FIGS. 2, 3) Additionally, the apparatus comprises a feed section (200) comprising a roll engaging position (E) and disposed adjacent to the slabbing position. (10:1-2; FIG. 2) Additionally, the apparatus comprises a discharge section (300) comprising a core-removal position (310) and disposed adjacent to the slabbing position. (10:17-18; FIG. 3) The motion of the radial-traversing element is limited according to the determined maximum depth of cut. (9:9-11)

Claim 17 requires the cutter of the apparatus of Claim 16 to further comprise a powered cutting blade (120). (5:33-36)

Claim 18 requires the cutter of the apparatus of Claim 16 to be attached to the axial-traversing element and the axial-traversing element is attached to the radial-traversing element. (7:22-25; FIG. 1)

Claim 19 requires the axial-traversing element of the apparatus of Claim 16 to be capable of transporting the cutter beyond the entire axial dimension of the roll to a cutter parking position. (8:32-37; FIG. 1)

Claim 20 requires the apparatus of Claim 16 to further comprise a sensor (500) capable of detecting the material of the roll. (8:21-22; FIG. 1)

VI. Grounds of Rejection to Be Reviewed on Appeal

Claims 1, 3-7, 9, 11-14, 16, and 18-19 stand finally rejected under 35 U.S.C. §103(a) over McCay, et al., U.S. Patent No. 4,506,575 in view of Esping, et al., U.S. Patent No. 6,761,098.

VII. Argument

As set forth below, the invention defining the appealed claims is unobvious over the cited references under 35 U.S.C. §103(a). Therefore, all rejections to the claims under 35 U.S.C. §103(a) should be reversed.

A. Claims 1, 3-7, 9, 11-14, 16, and 18-19 Are Unobvious Over *McCay* In View of *Esping*.

Claims 1, 3-7, 9, 11-14, 16, and 18-19 stand finally rejected under 35 U.S.C. §103(a) over McCay, et al., U.S. Patent No. 4,506,575 (the '575 reference) in view of Esping, et al., U.S. Patent No. 6,761,098 (the '098 reference). The '575 reference teaches a core slabber for removing paper from the cores of fiberboard rolls where the cores are to be reused comprising a horizontal core support, a clamp plate on the core support, a camshaft internally of the core support to move a pin outwardly radially from the core support to move the clamp outwardly to engage the interior of the core. (Abstract) The '575 reference discloses that a tube stem 22 forming a pillar supports a horizontal tube 18, which extends longitudinally, parallel to the path of travel of the carriage 13 and the rails 31, 32. (3:12-14)

In operation, the '575 reference discloses that before a core is placed on the machine in order to remove the excess paper, the crank 70 is rotated to a horizontal position coaxial with the camshaft 50. (3:37-40) **The core is slipped on the tube 18 over the tube lock plate 17.** (3:40-41) Ostensibly, a core having a material disposed thereabout is slid over and along the tube stem 22, thereby starting a drive unit 10 that is started and moved along a carriage 13 to the end of the core cutting the paper remaining on the core. (3:57-63) It is abundantly clear to those of skill in the art that the *McCay* reference provides a horizontal tube support upon which a user is required to position and slide a core the length of the tube. The only access to placing a core to the tube stem is limited to the unobstructed end of the cantilevered tube stem 22.

The Examiner asserts that, "*McCay* lacks an integral transport element with two engaging portions, but it is well known in the art to employ an integral transport element, as taught by Esping et al. '098, who shows in figure 2 a pair of engagement pins (18) for transporting the roll upward to the slabbing position (lines 28-30, column 2)."[1] The Examiner concludes that, "It would have been obvious to one of ordinary skill in the art to have modified McCay by replacing his roll support with Esping's integral transport element, as taught by Esping, in order to facilitate lifting the heavy roll into the slabbing position."[2]

Appellants are at a loss to understand how the side supports 7 and 8, as disclosed in the '098 reference, can be combined with a core slabber, as disclosed in the '575 reference. The '575 reference requires "the core [be] slipped on the tube 18 over the tube lock plate 17." (3:40-41) In other words, a core must be placed onto the tube 18 from one end of the tube. This is because one end of the cantilever tube is obstructed by the support that suspends the tube 18. In fact, the end of the tube 18 distal from the support is **the only** location from which a core may be disposed upon the tube in order to utilize the '575 core slabber.

Additionally, Appellants are at a loss to understand how the side supports, as disclosed by the '098 reference, which ostensibly engage opposing ends of a core, can be combined with a much less utilized in conjunction with the cantilevered tube of the *McCay* reference. Assuming, *arguendo,* that the side supports 7 and 8 of the '098 reference could be

[1] Sept. 5, 2007 Office Action, p. 2, ¶2

used in conjunction with the apparatus of the '575 reference, one of the side supports (either 7 or 8) would have to be removed from the core in order to effectuate positioning of the core upon the tube. One of skill in the art would likely understand that removal of one of the side supports (either 7 or 8) of the '098 reference would cause the core to catastrophically drop away from the remaining support (either 7 or 8). It is inconceivable to Appellants and likely to even those having a modicum of skill in the art how to appropriate the side supports (7 and 8) of the '098 reference and use them in concert with the tube of the '575 reference core slabber. Further, there is no disclosure, teaching, and/or suggestion in either the '575 reference or the '098 reference to combine a pair of side supports, such as those disclosed in the '098 reference, with the two base core slabbers, as disclosed in the '575 reference.

The proper obviousness analysis under 35 U.S.C. §103(a) requires, *inter alia,* the consideration of two factors: 1) whether the prior art would have suggested to those of ordinary skill in the art that they should make the claimed composition or device or carry out the claimed process, and 2) whether the prior art would also have revealed that in so making or carrying out, those of ordinary skill would have a reasonable expectation of success.[3] Without some disclosure, teaching, or suggestion, there is no factual or even remotely any logical legal basis that supports the Examiner's position.

In following the *Noelle* test, the disclosure of the '098 reference cited by the Examiner does nothing and, in fact, does not even provide for a modicum of a suggestion or motivation to provide for Appellants' claimed apparatus. Nowhere within the four corners of the '575 reference is there a suggestion to provide an integral transport element capable of engaging the roll and of conveying the roll to a slabbing position where the transport element further comprises a pair of roll engaging elements capable of penetrating engagement of the core. It seems improbable that one of skill in the art having the disclosure of the '575 reference in hand would even be remotely likely to consider the disclosure of the '098 reference to modify the deficiencies provided therein without the use of impermissible hindsight. "Even if all its limitations could be found in the total set of elements combined in the prior art references, a claimed invention would not be obvious without a demonstration of

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[2] *Id.*

the existence of a motivation to combine those references at the time of the invention."[4] Further, the Examiner has provided no clear and particular suggestion of combinability within any of the cited references that would render Appellants' instant claims obvious.

Appellants respectfully believe that the '575 reference, in view of the '098 reference, does not teach, disclose, or even remotely suggest each and every element of Appellants' claimed invention. In particular, the combination of the '575 reference and the '098 reference does not disclose or suggest Appellants' claimed apparatus for slabbing a roll. Accordingly, the rejection of the instant claims under 35 U.S.C. §103(a) over the '575 reference in view of the '098 reference should be summarily withdrawn.

VIII. Conclusion

The Examiner has not satisfied the evidentiary burden of demonstrating that Appellants' claimed invention is inadequately claimed and/or obvious over the cited references. Specifically, nothing in the cited references, when taken individually or even in combination with Appellants' specification, comes remotely close to teaching, disclosing, or suggesting Appellants' claimed apparatus for slabbing a roll.

Thus, for the reasons stated above, the Board is respectfully requested to find Claims 1, 3-7, 9, 11-14, 16, and 18-19 of the instant Application allowable over the references cited by the Examiner.

Respectfully submitted,

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February 25, 2008
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[3] *See Noelle v. Ledderman*, 355 F.3rd 1344, 69 U.S.P.Q. 2d 1508 (Fed. Cir. 2004)

[4] *National Steel Car, Ltd. v. Canadian Pacific Railway, Ltd.*, 357 F.3d 1319, 69 U.S.P.Q.2d 1641 (Fed. Cir. 2004)

CLAIMS APPENDIX

1. (Rejected) An apparatus for slabbing a roll having a generally cylindrical shape, an axis, an axial dimension, a radius, a core having a core diameter an outer circumference and a wall thickness, and a material having an outer circumference wound around the core, the apparatus comprising:

a) a transport element capable of engaging the roll and of conveying the roll to a slabbing position, said transport element further comprising a pair of roll engaging elements capable of penetrating engagement of the core,

b) a cutter capable of separating the material of the roll,

c) an axial-traversing element capable of transporting the cutter at least along the entire axial dimension of the material of the roll as, or after, the roll is transported to the slabbing position,

d) a radial-traversing element capable of transporting the cutter at least from the outer circumference of the roll to the outer circumference of the core as, or after, the roll is transported to the slabbing position, and

e) a controller capable of determining a maximum depth of cut,

wherein the motion of the radial-traversing element is limited according to the determined maximum depth of cut.

2. (Withdrawn) The apparatus according to claim 1 wherein the cutter comprises a powered cutting blade.

3. (Rejected) The apparatus according to claim 1 further comprising a feed section disposed adjacent to the slabbing position,

wherein the transport element is capable of engaging a roll disposed in the feed section and of conveying the roll from the feed section to the slabbing position.

4. (Rejected) The apparatus according to claim 1 further comprising a discharge section disposed adjacent to the slabbing position,

wherein the roll may be conveyed to the discharge section from the slabbing position.

5. (Rejected) The apparatus according to claim 1 further comprising a material removal section disposed at least partly beneath the slabbing position and capable of receiving material separated from the roll.

6. (Rejected) The apparatus according to claim 1 wherein the cutter is attached to the axial-traversing element and the axial-traversing element is attached to the radial-traversing element.

7. (Rejected) The apparatus according to claim 6 wherein the axial-traversing element is capable of transporting the cutter beyond the entire axial dimension of the roll to a cutter parking position.

8. (Withdrawn) The apparatus according to claim 1 further comprising a sensor capable of detecting the material of the roll.

9. (Rejected) An apparatus for slabbing a roll having a generally cylindrical shape, an axis, an axial dimension, a radius, a core having a core diameter an outer circumference and a wall thickness, and a material having an outer circumference wound around the core, the apparatus comprising:

a) a transport element capable of engaging the roll and of conveying the roll to a slabbing position, said transport element further comprising two roll engaging elements capable of engaging said core,

b) a cutter capable of separating the material of the roll,

c) an axial-traversing element capable of transporting the cutter at least along the entire axial dimension of the material of the roll as, or after, the roll is transported to the slabbing position,

d) a radial-traversing element capable of transporting the cutter at least from the outer circumference of the roll to the outer circumference of the core as, or after, the roll is transported to the slabbing position,

e) a controller capable of determining a maximum depth of cut according to the core wall thickness, and

f) a material removal section disposed at least partly beneath the slabbing position and capable of receiving material separated from the roll,

wherein the motion of the radial-traversing element is limited according to the determined maximum depth of cut.

10. (Withdrawn) The apparatus according to claim 9 wherein the cutter comprises a powered cutting blade.

11. (Rejected) The apparatus according to claim 9 further comprising a feed section disposed adjacent to the slabbing position,

wherein the transport element is capable of engaging a roll disposed in the feed section and of conveying the roll from the feed section to the slabbing position.

12. (Rejected) The apparatus according to claim 9 further comprising a discharge section disposed adjacent to the slabbing position,

wherein the roll may be conveyed to the discharge section from the slabbing section.

13. (Rejected) The apparatus according to claim 9 wherein the cutter is attached to the axial-traversing element and the axial-traversing element is attached to the radial-traversing element.

14. (Rejected) The apparatus according to claim 13 wherein the axial-traversing element is capable of transporting the cutter beyond the entire axial dimension of the roll to a cutter parking position.

15. (Withdrawn) The apparatus according to claim 9 further comprising a sensor capable of detecting the material of the roll.

16. (Rejected) An apparatus for slabbing a roll having a generally cylindrical shape, an axis, an axial dimension, a radius, a core having a core diameter an outer circumference and a wall thickness, and a material having an outer circumference wound around the core, the apparatus comprising:

a) a transport element integral with said apparatus that engages the roll and conveys the roll to a slabbing position, said transport element further comprising two roll engaging elements capable of engaging said core,

b) a cutter that separates the material of the roll from itself,

c) an axial-traversing element that transports the cutter at least along the entire axial dimension of the material of the roll as, or after, the roll is transported to the slabbing position,

d) a radial-traversing element that transports the cutter at least from the outer circumference of the roll to the outer circumference of the core as, or after, the roll is transported to the slabbing position,

e) a controller that determines a maximum depth of cut,

f) a material removal section disposed at least partly beneath the slabbing position that receives material separated from the roll,

g) a feed section comprising a roll-engaging position and disposed adjacent to the slabbing position, and

h) a discharge section comprising a core-removal position and disposed adjacent to the slabbing position,

wherein the motion of the radial-traversing element is limited according to the determined maximum depth of cut.

17. (Withdrawn) The apparatus according to claim 16 wherein the cutter comprises a powered cutting blade.

18. (Rejected) The apparatus according to claim 16 wherein the cutter is attached to the axial-traversing element and the axial-traversing element is attached to the radial-traversing element.

19. (Rejected) The apparatus according to claim 16 wherein the axial-traversing element is capable of transporting the cutter beyond the entire axial dimension of the roll to a cutter parking position.

20. (Withdrawn) The apparatus according to claim 16 further comprising a sensor capable of detecting the material of the roll.

EVIDENCE APPENDIX

N/A

RELATED PROCEEDINGS APPENDIX

N/A